



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[WV104-6042; FRL-9828-8]

#### **Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Update to Materials Incorporated by Reference**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; administrative change.

**SUMMARY:** EPA is updating the materials that are incorporated by reference (IBR) into the West Virginia State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the West Virginia Department of Environmental Protection (WV DEP) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, D.C., and the EPA Regional Office.

**DATES:** This action is effective [insert date of publication in the Federal Register].

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW, Room Number 3334, EPA West Building, Washington, DC 20460; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

[http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:** Sharon McCauley, (215) 814-3376 or by e-mail at [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997 Federal Register document. On February 10, 2005 (70 FR 7024), EPA published a Federal Register beginning the new IBR procedure for West Virginia. On February 28, 2007 (72 FR 8903) February 10, 2009 (74 FR 6542), and December 28, 2010 (75 FR 81474), EPA published updates to the IBR material for West Virginia.

Since the publication of the last IBR update, EPA has approved into the SIP the following regulatory changes to the following West Virginia regulations:

#### **A. Added Regulations**

1. 45 CSR 35 (Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)), 45 CSR 35-5 (Inconsistency Between Rules).

## **B. Revised Regulations**

1. 45 CSR 8 (Ambient Air Quality Standards), sections 45-8-1 through 45-8-4.
2. 45 CSR 14 (Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration), sections 45-14-1 through 45-14-26.
3. 45 CSR 35 (Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)), sections 45-35-1 through 45-35-4.

## **C. Removed Regulations**

1. 45 CSR 8, sections 45-8-5 through 45-8-7.

## **II. EPA Action**

In this action, EPA is announcing the update to the IBR material as of April 1, 2013. EPA is also correcting the entries in the “State Citation” column for Regulation 45 CSR 8 (Ambient Air Quality Standards) to read “Section 45-8-1,” “Section 45-8-2,” “Section 45-8-3,” and “Section 45-8-4.”

EPA has determined that today’s rule falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today’s rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the

APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

### **III. Statutory and Executive Order Reviews**

#### **A. General Requirements**

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S.

House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the West Virginia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this “Identification of plan” update action for West Virginia.

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 5, 2013

W. C. Early, Acting  
Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

**PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

**Subpart XX - West Virginia**

2. Section 52.2520 is amended by:

- a. Revising paragraph (b);
- b. Revising the heading of paragraph (c); and
- c. In paragraph (c) revising each entry under 45 CSR 8 (Ambient Air Quality Standards).

The revised text read as follows:

**§ 52.2520 Identification of plan.**

\* \* \* \* \*

(b) *Incorporation by reference.*

(1) Material listed as incorporated by reference in paragraphs (c) and (d) of this section with an EPA approved date of April 1, 2013 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the Federal Register. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after April 1, 2013 will be incorporated by reference in the next update to the SIP compilation.

(2)(i) EPA Region III certifies that the rules and regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules and regulations which have been approved as part of the State implementation plan as of April 1,

2013.

(ii) EPA Region III certifies that the following source-specific requirements provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State source-specific requirements which have been approved as part of the State implementation plan as of November 1, 2010. No additional revisions were made between November 1, 2010 and April 1, 2013.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814-2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue NW, Washington, DC 20460. For further information, call (202) 566-1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(c) *EPA-Approved Regulations and Statutes.*

#### **EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP**

| <b>State citation<br/>[Chapter 16 - 20<br/>or 45 CSR ]</b> | <b>Title/subject</b>  | <b>State<br/>effective<br/>date</b> | <b>EPA<br/>approval<br/>date</b> | <b>Additional<br/>explanation/<br/>citation at 40<br/>CFR 52.2565</b> |
|--|-----------------------|-------------------------------------|----------------------------------|---|
| <b>* * * * *</b>   |                       |                                     |                                  |   |
| <b>[45 CSR] Series 8 Ambient Air Quality Standards</b>     |                       |                                     |                                  |   |
| Section 45-8-1   | General               | 6/1/12                              | 10/29/12<br>77 FR 65493          | Filing and<br>effective dates<br>are revised.                         |
| Section 45-8-2   | Definitions           | 6/1/12                              | 10/29/12<br>77 FR 65493          |   |
| Section 45-8-3   | Adoption of Standards | 6/1/12                              | 10/29/12<br>77 FR 65493          | Effective date<br>is revised.   |



| <b>State citation<br/>[Chapter 16 - 20<br/>or 45 CSR ]</b> | <b>Title/subject</b>        | <b>State<br/>effective<br/>date</b> | <b>EPA<br/>approval<br/>date</b> | <b>Additional<br/>explanation/<br/>citation at 40<br/>CFR 52.2565</b> |
|--|-----------------------------|-------------------------------------|----------------------------------|---|
| Section 45-8-4   | Inconsistency Between Rules | 6/1/12                              | 10/29/12<br>77 FR 65493          |   |
| * * * * *  |                             |                                     |                                  |   |

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